

Amendment No. 1 to SB3169

**Norris
Signature of Sponsor**

AMEND Senate Bill No. 3169*

House Bill No. 3191

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 50-6-110(c)(1), is amended by deleting the second sentence of this subdivision in its entirety and by substituting instead the following language:

This presumption may only be rebutted by a showing of clear and convincing evidence that such drug or alcohol was not the proximate cause of injury.

SECTION 2. Tennessee Code Annotated, Section 50-6-116, is amended by designating the current language as subsection (a) and by adding the following language as a new subsection to be designated as subsection (b):

The liberal construction in favor of the employee shall apply only when the court is making a determination of the compensability of the workers' compensation claim and there shall be no liberal construction given by the courts when deciding any other issue in the lawsuit.

SECTION 3. Tennessee Code Annotated, Title 50, Chapter 6, Part 2, is amended by adding the following as a new section:

Section 50-6-214. The word "accident" as used in Section 50-6-102 shall not be construed to mean a series of events in employment, of a similar or like nature, occurring regularly, continuously or at frequent intervals in the course of such employment, over extended periods of time, whether such events may or may not be attributable to fault of the employer. Injury to the neck, shoulder, elbow, hand, wrist, or back resulting from such repetitive events is not a compensable injury under this chapter.

SECTION 4. Tennessee Code Annotated, Section 50-6-204(f), is amended by adding the following language at the end of the subsection:

A presumption shall exist in favor of the authorized treating physician's testimony over that of an independent medical examiner.

SECTION 5. Tennessee Code Annotated, Section 50-6-229(a), is amended by deleting the language "amount to a sum of all future installments of compensation" from the fourth sentence of the subsection and by substituting instead the language "amount to a sum equal to the value of all future installments of compensation calculated on a six percent (6%) basis".

SECTION 6. Tennessee Code Annotated, Section 50-6-232(a), is amended by deleting the language "a sum of all future installments of compensation" from the first sentence of the subsection and by substituting instead the language "a sum equal to the present value of all future installments of compensation calculated on a six percent (6%) basis".

SECTION 7. Tennessee Code Annotated, Section 50-6-207(4)(a)(i), is amended by deleting the language "until the employee is, by age, eligible for full benefits in the Old Age Insurance Benefit Program under the Social Security Act" and by substituting instead the language "until the employee reaches the age of sixty-five (65)".

SECTION 8. Tennessee Code Annotated, Section 50-6-241, is amended by deleting the section in its entirety and by substituting instead the following:

Section 50-6-241.

(a)

(1) In cases where an injured employee is eligible to receive any permanent partial disability benefits, pursuant to § 50-6-207(3)(A)(i) and (F), and the pre-injury employer returns the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of injury, the maximum permanent partial disability award that the employee may receive is one (1) times the medical impairment rating determined by the treating physician pursuant to the provisions of the American Medical Association Guides to the Evaluation of Permanent Impairment (American Medical Association), the Manual for Orthopedic Surgeons in Evaluating Permanent Physical Impairment (American

Academy of Orthopedic Surgeons), or in cases not covered by either of these, an impairment rating by any appropriate method used and accepted by the medical community. In making determinations, all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition shall be considered.

(2) In accordance with this section, the courts may reconsider, upon the filing of a new cause of action, the issue of industrial disability. Such reconsideration shall examine all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition. Such reconsideration may be made in appropriate cases where the employee is no longer employed by the pre-injury employer and makes application to the appropriate court within one (1) year of the employee's loss of employment, if such loss of employment is within four hundred (400) weeks of the day the employee returned to work. In enlarging a previous award, the court must give the employer credit for prior benefits paid to the employee in permanent partial disability benefits, and any new award remains subject to the maximum established in subsection (b).

(b) Subject to factors provided in subsection (a) of this section, where an injured employee is eligible to receive permanent partial disability benefits, pursuant to § 50-6-207(3)(A)(i) and (F), and the pre-injury employer does not return the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of injury, the maximum permanent partial disability award that the employee may receive is three (3) times the medical impairment rating determined by the treating physician pursuant to the provisions

of the American Medical Association Guides to the Evaluation of Permanent Impairment (American Medical Association), the Manual for Orthopedic Surgeons in Evaluating Permanent Physical Impairment (American Academy of Orthopedic Surgeons), or in cases not covered by either of these, an impairment rating by any appropriate method used and accepted by the medical community. In making such determinations, all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition shall be considered.

SECTION 9. Tennessee Code Annotated, Section 50-6-242, is amended by deleting the section in its entirety.

SECTION 10. Tennessee Code Annotated, Section 50-6-405, is amended by adding the following as a new subsection (j):

(j) The commissioner of commerce and insurance may request any information or data the commissioner deems to be helpful in determining that a self-insuring employer or pool authorized under this part is financially and actuarially sound for the purposes of meeting obligations imposed under this chapter. The commissioner may request, but not be limited to requesting, financial statements, audits and any information that the commissioner may request of an insurer under title 56. The commissioner may use any power and any sanction or remedy available under title 56 for use with respect to an insurer in order to obtain such information from such self-insured employer or pool.

SECTION 11. Tennessee Code Annotated, Section 50-6-205(b)(3), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(3) Any employer or such employer's insurance carrier who fails to pay compensation as herein provided shall suffer a penalty on any unpaid installments of:

(A) fifteen percent (15%) on payments that are paid between fifteen (15) days and twenty (20) days after the payment is due;

- (B) twenty percent (20%) on payments that are paid between twenty-one (21) days and thirty (30) days after the payment is due; and
- (C) thirty percent (30%) on payments that are paid more than thirty (30) days after the payment is due.

SECTION 12. Tennessee Code Annotated, Section 50-6-236, is amended by adding the following as a new subsection:

(m) A workers' compensation specialist is authorized to set mandatory meetings of the parties for a benefit review conference. A specialist is also authorized to hold such mandatory benefit review conferences, to order initiation of temporary disability and medical benefits under this chapter, and to settle cases.

SECTION 13. Tennessee Code Annotated, Section 50-6-239(c), is amended by deleting subdivisions (2) and (3), by redesignating existing subdivision (4) as subdivision (3), and by substituting instead the following as a new subdivision (2):

(2)

(A) A benefit review conference program is mandatory for all cases under this chapter and a court may not conduct a trial or enter an agreed order without a report from a workers' compensation specialist pursuant to § 50-6-240, unless otherwise permitted by this section.

(B) A benefit review conference shall be held within thirty (30) days of the date the employee reached maximum medical improvement as determined by the treating physician or is released to return to work, whichever occurs first. If the department of labor and workforce development is unable for any reason to schedule and conduct a benefit review conference for the purpose of mediating all claims the employee may have against the employer, the employer and the employee may:

- (i) agree to have a Rule 31 mediator, as qualified under Rule 31 of the Rules of the Supreme Court of the State of Tennessee, conduct the mediation; or

(ii) petition the court having jurisdiction to appoint a Rule 31 mediator to conduct the benefit review conference.

(C) If a settlement is reached between the parties at the mediation, which may include any and all issues relating to the employment relationship between the parties, the agreed on Rule 31 mediator shall have the powers to approve the settlement in the same manner as a workers' compensation specialist. The expenses of the Rule 31 mediator conducting the benefit review conference shall be taxed as costs in the civil action or paid as otherwise agreed by the parties.

SECTION 14. Tennessee Code Annotated, Section 50-6-207(4)(a)(i), is amended by adding the following language at the end of the item:

When an employee between fifty-seven (57) and sixty (60) years of age is injured, permanent total disability benefits shall be payable until the employee reaches age sixty-five (65).

SECTION 15. The advisory council on workers' compensation shall study the issues relating to medical costs in workers' compensation cases and bring a recommendation concerning a medical fee schedule to the general assembly on or before January 15, 2005.

SECTION 16. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 17. This act shall take effect July 1, 2004, the public welfare requiring it